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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ELIZABETH MUNOZ, as Trustee, etc.,

Plaintiff and Respondent,

v.

LUCILLE ESTRADA et al.,

Objectors and Appellants.

B203230

(Los Angeles County
Super. Ct. No. BP104708)

APPEAL from an order of the Superior Court of Los Angeles County.

Aviva K. Bobb, Judge. Affirmed.

Lilli B. Musil for Objectors and Appellants.

Greenberg Traurig, Matthew S. Steinberg, Deborah Pouratian, and Amy B.
Alderfer for Plaintiff and Respondent.

Lucille and Alicia B. Estrada, daughters of the late Guillermo B. Estrada (Estrada), appeal from a probate court order granting the petition of their sister, Elizabeth Munoz, trustee of Estrada's trust (respondent), to confirm the trust's title to family real property (the property). Appellants contend that the court erred by not abating the petition, in favor of appellants' earlier-filed action for partition of the property, and that the court denied due process by determining ownership without affording appellants a trial and opportunity to present evidence. We find these contentions unmeritorious, and affirm the order.

FACTS

In 1998 Estrada created his trust, with himself as trustee, transferring thereto all his personal property. The trust instrument provided that upon Estrada's death respondent would become trustee, and would divide the trust estate into equal shares, to be distributed to Estrada's three daughters. Simultaneous with creation of the trust, Estrada quitclaimed the property to himself as trustee. The deed was recorded on April 29, 1998.

On February 4, 2005, a week before his death, Estrada, as trustee, executed a grant deed, conveying the property to his daughters as tenants in common. This deed was not recorded until 20 months later, in October 2006. Shortly thereafter, respondent commenced efforts to sell the property. She encountered difficulties, however, with appellant Lucille Estrada, who resided on the property, and there kept two pit bull dogs, posing an obstacle to entry. Respondent also was apprised that the recently recorded deed created a cloud on title, interfering with sale.

On January 17, 2007, appellants commenced in superior court an action for partition of the property, with lis pendens, naming respondent as a defendant. Appellants each claimed a one-third interest, and they prayed the property be partitioned by sale or appraisal. Four months later, on May 18, 2007, respondent filed the present petition to determine title to the property, under Probate Code section 850, subdivision (a)(3) (undesignated section references are to that code). In her verified petition, respondent alleged the facts stated above, and she attached as exhibits Estrada's death certificate, the

trust, the two deeds, and appellants' complaint and lis pendens. Respondent prayed an order that the ownership of the property resided in the trust.

Lucille Estrada filed objections to the petition, asserting that appellants had instituted their partition action because respondent did not want to sell the property. At the initial hearing of the petition, on July 2, 2007, counsel entered an appearance for both appellants, as objectors. The court inquired why the petition should not be abated, pursuant to section 854.¹ Respondent requested time to respond in writing, and the court ruled, "Sure. There will be a response by July 16th, and we'll hear this – decide it on July 30th." The court then changed the hearing date to August 1, because appellants' counsel had a conflict on July 30.

Respondent filed a supplement to the petition. Emphasizing that the probate court had discretion not to abate the petition if appellants had filed their civil action for delay, respondent argued that the partition suit was part of Lucille Estrada's interference with and forestalling of the sale of the property, as were her noncooperation with respondent's sales efforts, and disrepair of the property, including the dogs' destruction of the landscaping and befouling of the premises.

At the hearing on August 1, 2007, only respondent and her counsel appeared. In support of the petition, counsel urged that the presence of a competing deed required judicial resolution to enable sale, and the partition action would not clear title. Counsel further argued that recognition of the original deed would provide the three beneficiaries a stepped-up tax basis in the property, which the newer deed would not. The court granted the petition, "finding that the civil action was filed for purposes of delay." On August 8, 2007, the court entered the order under review, finding that all notices had been

¹ Section 854 provides: "If a civil action is pending with respect to the subject matter of a petition filed pursuant to this chapter and jurisdiction has been obtained in the court where the civil action is pending prior to the filing of the petition, upon request of any party to the civil action, the court shall abate the petition until the conclusion of the civil action. This section shall not apply if the court finds that the civil action was filed for the purpose of delay."

given, the petition's allegations were true, and the petition was not abated under section 854. The order decreed that respondent, as trustee of Guillermo Estrada's trust, was the owner of the property.

On August 10, 2007, Lucille Estrada filed a "petition" for reconsideration of the order. She attached numerous documents, including a personal right of occupancy for Estrada, which respondent had executed on February 4, 2005, the day Estrada deeded the property to his daughters. Respondent had later executed a claim for property tax reassessment exclusion on account of the transfer. Lucille Estrada cited this documentation as new evidence, and asserted that the 2005 grant had been effective.

Respondent filed opposition to reconsideration and requested sanctions of \$3,160, noting that appellants' counsel had not explained her absence from the previous hearing. (At the hearing, appellants' attorney stated, "I had another attorney to appear. He did not appear because he had a conflict. He was unable to appear.") The court denied reconsideration and granted sanctions of \$1,250, against Lucille Estrada and appellants' attorney.

DISCUSSION

Appellants' first contention is that the court erred in refusing to abate respondent's petition, because of the prior pendency of appellants' partition action. Appellants rely on a decision involving two civil actions. (*Lawyers Title Ins. Corp. v. Superior Court* (1984) 151 Cal.App.3d 455.) But in this case the issue is governed not by the rules applicable to abatement of civil actions, but by section 854. (*Conservatorship of Pacheco* (1990) 224 Cal.App.3d 171, 175-177 [applying predecessor section].) That statute expressly withdraws its provision for abatement "if the court finds that the civil action was filed for the purpose of delay." In such circumstances, the question of abatement devolves to the probate court's discretion. (Ross, Cal. Practice Guide: Probate (2008) ¶ 15.368, p. 15-104.1.)

The court's decision not to abate respondent's petition was not an abuse of discretion. The court was entitled to credit the evidence that appellants were obstructing sale of the property, and to conclude that their lawsuit had been filed as part of that delay.

The prospect of a speedier resolution of the ownership issue under respondent's petition justified refusing to abate it.

Appellants' second contention is that the court denied them due process, by divesting them of their interests in the property without an evidentiary hearing. Not having requested such a hearing or asserted its necessity below, appellants may well be deemed to have waived the issue. But the contention and its components lack merit, regardless.

First, appellants were not divested, or "dispossessed," of their interests in the property. Under the probate court's order, appellants retained their entitlement to two-thirds of the property. Second, the proceeding below was not a default prove-up in a quiet title action, for which an evidentiary hearing is statutorily required. (See Code Civ. Proc., § 764.010; *Yeung v. Soos* (2004) 119 Cal.App.4th 576, 580-582.) Nor did the court lack subject matter jurisdiction as in *Dabney v. Dabney* (2002) 104 Cal.App.4th 379, in which the probate court had ordered a party who held property in cotenancy with a trust to execute documents adjusting the lot line between her property and an adjacent trust property.

Appellants also assert that they were denied a fair hearing, because ownership of the property was decided in a brief hearing, at which appellants were not allowed to testify, present evidence, or cross-examine witnesses. The short answer to this argument is that, once again, appellants were not denied these elements: appellants neither requested them nor attended the hearing, at which they could have been afforded. Furthermore, appellants did present written evidence, in advance of the hearing. Appellants may not complain on appeal that the petition was resolved on such evidence, which they advanced and did not object to in the probate court. (*Evangelho v. Presoto* (1998) 67 Cal.App.4th 615, 620-621.)

DISPOSITION

The order is affirmed.

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COOPER, P. J.

We concur:

RUBIN, J.

FLIER, J.